

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MIRIAM SPIRA

CV-04 4607

Plaintiff,

-against-

ASHWOOD FINANCIAL, INC.

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ OCT 26 2004 ★

LONG ISLAND OFFICE

GLASSER, J.

MANN, M.

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff Miriam Spira seeks redress for the illegal practices of Ashwood Financial, Inc. concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").

Parties

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a "consumer" as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that defendant sought to collect from plaintiff is a consumer debt, purportedly owed to NYUMC Pediatric Cardiology.
4. Defendant's principal place of business is located in Indianapolis, Indiana.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

6. Defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

Jurisdiction and Venue

7. This Court has Federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district.
9. On information and belief, on a date better known by defendant, defendant attempted to collect an alleged consumer debt from the plaintiff.
10. On or about September 13, 2004 defendant sent the plaintiff a collection letter seeking to collect a balance of \$29.08 allegedly incurred for personal purposes.
11. The collection letter was the first communication with the plaintiff from the defendant.
12. The September 13, 2004 collection letter states in pertinent part as follows:

NOTICE: It is the policy of this agency to report all unpaid accounts to a major credit bureau after 30 days of this notice. Protect your credit by paying this debt."
13. The said letter is in violation of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692c(10) and 1692g for the defendant's contradicting the plaintiff's right to dispute the debt and seek verification documents.
14. Defendant sent an additional letter to the plaintiff dated October 12, 2004 which is within the initial thirty day period.
15. Said letter states in pertinent part: "It is our intent to pursue collection of this debt through every means available to us. We extend this opportunity to settle this debt in a

friendly manner. You may either send your payment in full to Ashwood Financial or you must call 1-800-851-5736 at once.

16. The said letter is in violation of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692e(5), 1692e(10) and 1692g for the defendant's contradicting the plaintiff's right to dispute the debt and seek verification documents and for engaging in false threats and deceptive practices.

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of herself and the members of a class, as against the defendant.

17. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-14 as if set forth fully in this Cause of Action.
18. This action is brought on behalf of plaintiff and the members of a class.
19. The Class consists of consumers who received the same form letter, as did the plaintiff.
20. The Class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the defendant's letterhead in substantially the same form as the letter sent to the plaintiff on or about September 13, 2004 sent within one year prior to the date of the within complaint; (b) the collection letter was sent to a consumer seeking payment of a consumer debt; and (c) the collection letter was not returned by the postal service as undelivered (c) and that the letter contained violations of 15 U.S.C. §§ 1692e(10) and 1692g.
21. A sub-class consists of those member who received the October 12, 2004 letter as well.

22. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:
- (A) Based on the fact that the collection letters that are at the heart of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable.
 - (B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA using collection letters that did not contain the requisite notices mandated by the FDCPA.
 - (C) The only individual issue is the identification of the consumers who received the letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.
 - (D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
 - (E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The plaintiff's interests are consistent with those of the members of the class.
23. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the

risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

24. If the facts are discovered to be appropriate, the plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.
25. Collection letters, such as those sent by the defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

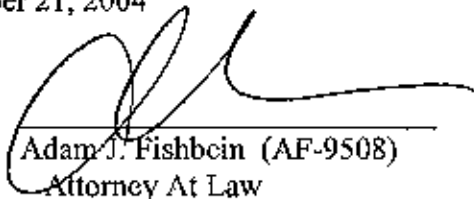
Violations of the Fair Debt Collection Practices Act

26. The actions of the defendant violate the Fair Debt Collection Practices Act.
27. Because the defendant violated of the Fair Debt Collection Practices Act, the plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in her favor and on behalf of the members of the class, and against the defendant and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

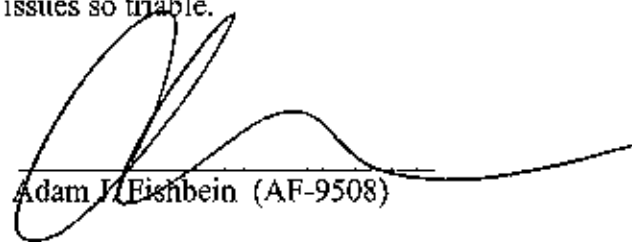
Dated: Woodmere, New York
October 21, 2004



Adam J. Fishbein (AF-9508)
Attorney At Law

Attorney for the Plaintiff
735 Central Avenue
Woodmere, New York 11598
Telephone (516) 791-4400
Facsimile (516) 791-4411

Plaintiff requests trial by jury on all issues so triable.



Adam J. Fishbein (AF-9508)

P.O. BOX 22349
INDIANAPOLIS IN 46222-0349
ADDRESS SERVICE REQUESTED



September 13, 2004

ASHWOOD FINANCIAL
P.O. BOX 22349
INDIANAPOLIS IN 46222-0349

279564-1-006 04006
MIRIAM SPIRA
1363 40TH ST
BROOKLYN NY 11218-3503

(800) 851-5736

Account No. : 279564-1	Balance Due : \$ 29.08	Amt. Enclosed : \$ _____	
Area Code ()	Home Phone --	Area Code ()	Work Phone --

✕ Detach Upper Portion And Return With Payment ✕

IMPORTANT COLLECTION NOTICE

RE : NYUMC PED CARDIOLOGY

PRINCIPAL :	\$ 29.08
INTEREST :	\$ 0.00
COLLECTION FEES :	\$ 0.00
BALANCE DUE :	\$ 29.08

Dear MIRIAM SPIRA,

The above past due account has been placed with us for collection.

NOTICE: It is the policy of this agency to report all unpaid accounts to a major credit bureau after 30 days of this notice.

Protect your credit by paying this debt. Thank you for your anticipated cooperation.

Sincerely,

Mrs. Green

Mrs. Green
Account Representative
(800) 851-5736
CITY OF NEW YORK LICENSE NUMBER #1099206

The purpose of this communication is to collect the debt which is the subject of this letter. Any information obtained will be used for the purpose of collecting the debt.

Unless within (30) days after receipt of the first communication from this office you dispute the validity of the debt or any portion thereof, it will be assumed to be valid. If you notify this office in writing within the thirty (30) day period after receipt of the first communication from this office that you dispute the debt or any portion thereof, this office will obtain verification of the debt and a copy of such verification, along with the creditor's name and address, will be mailed to you by this office. If you request in writing, within the thirty (30) day period, the name and address of the original creditor, if different from the current creditor, this office will provide you with the requested information. This is required under the Fair Debt Collection Practices Act.

P.O. BOX 22349
INDIANAPOLIS IN 46222-0349
ADDRESS SERVICE REQUESTED



October 12, 2004

ASHWOOD FINANCIAL
P.O. BOX 22349
INDIANAPOLIS IN 46222-0349

279564-009 25835
MIRIAM SPIRA
1363 40TH ST
BROOKLYN NY 11218-3503

(800) 851-5736

Account No. : 279564	Balance Due : \$ 29.08	Amt. Enclosed : \$	
Area Code ()	Home Phone --	Area Code ()	Work Phone --

✂ Detach Upper Portion And Return With Payment ✂

CREDITOR	REFERENCE #	AMOUNT
NYUMC PED CARDIOLOGY	PECA100005754	\$ 29.08
TOTAL DUE :		\$ 29.08

Dear MIRIAM SPIRA,

You have failed to respond to our previous notice advising you of the delinquency of your account.

It is our intent to pursue collection of this debt through every means available to us.

We extend this opportunity to settle this debt in a friendly manner. You may either send your payment in full to Ashwood Financial or you must call 1-800-851-5736 at once.

Cordially,

Mrs. Green

Mrs. Green
800-851-5736

CITY OF NEW YORK LICENSE NUMBER #1099206

The purpose of this communication is to collect the debt which is the subject of this letter. Any information obtained will be used for the purpose of collecting the debt.

(SEE REVERSE)